

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BR2

PLR-136639-10

Date:

January 03, 2011

Legend

Parent =

Sub =

Foreign Parent =

Corp A =

Corp B =

Corp C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Dear :

We respond to your letter dated August 30, 2010, submitted by your authorized representative, requesting a ruling that, pursuant to section 1504(a)(3)(B) of the Internal Revenue Code and section 7 of Revenue Procedure 2002-32, 2002-1 C.B. 959, the Secretary waive the general rule of section 1504(a)(3)(A) of the Code, which generally provides that five years must elapse before a corporation that ceases to be a member of an affiliated group filing a consolidated return may join in the filing of a consolidated return with the same affiliated group. The information submitted in that letter and a subsequent letter dated December 14, 2010 is summarized below.

Background

Parent, a life insurance company taxable under section 801, was the common parent of an affiliated group of corporations that filed a consolidated federal income tax return through Year 1. Parent's consolidated group consisted of Parent and Sub, a wholly owned life insurance company taxable under section 801.

Foreign Parent wholly owns Corp A, a domestic corporation. Corp A is the common parent of an affiliated group of corporations that file a consolidated federal income tax return. Corp A wholly owned Corp B. Neither Corp A nor Corp B is a life insurance company taxable under section 801.

In Year 1, Corp B acquired 100% of the stock of Parent. On Date 1, Corp B formed Corp C as a wholly owned life insurance subsidiary and contributed the stock of Parent to Corp C. Beginning in Year 2, Corp C became the common parent of the group of life insurance companies that included Parent and Sub.

On Date 2, Corp C distributed the stock of Parent to Corp B. Corp C filed a life/life consolidated tax return for the Year 3 tax year. The Year 3 tax results for Parent and

Sub for the period up to and including Date 2 were included in this life/life consolidated return. Parent and Sub filed a consolidated return as a life/life group for the short period beginning Date 3 and ending on the last day of the Year 3 taxable year.

In Year 4, after Parent and Sub had been affiliated with the Corp A group for five years, Corp A made an election pursuant to section 1504(c)(2)(A) to treat Parent and Sub as includible corporations and began filing a life/nonlife consolidated federal income tax return for the Year 4 tax year. Thus, Parent and Sub joined in the filing of the Corp A life/nonlife consolidated return, and Parent and Sub ceased to be members of the Parent consolidated group at the close of the Year 3 taxable year.

On Date 4, Corp A sold 100% of the Corp B stock to Foreign Parent. As a result, Corp B became the common parent of an affiliated group. Parent and Sub, however, cannot be treated as includible corporations in a consolidated group of which Corp B is the common parent because under section 1504(c)(2) Parent and Sub have not been members of this affiliated group for the five preceding taxable years. Moreover, Parent and Sub will not be eligible to join in their own life consolidated group absent a waiver of section 1504(a)(3)(A).

Analysis

Section 1504(a) defines the term “affiliated group” to mean one or more chains of includible corporations connected through stock ownership with a common parent that is an includible corporation.

Section 1504(b)(2) provides that the term “includible corporation” means any corporation except insurance companies subject to taxation under section 801.

Section 1504(c)(2)(A) provides that when an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the five taxable years immediately preceding the taxable year for which the consolidated return is filed.

Section 1504(a)(3)(A) provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group and such corporation ceases to be a member of such group, that corporation may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

Section 1504(a)(3)(B) provides that the Secretary may waive application of section 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

Section 1504(a)(3)(A) was enacted by section 60(a) of the Tax Reform Act of 1984. Congress authorized Treasury to waive this provision subject to such conditions as Treasury may prescribe. The Conference Report states that the rule prohibiting consolidation after deconsolidation is an anti-abuse rule. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 833 (1984).

In this case, the disaffiliation and the reconsolidation of the Parent consolidated group was not abusive, but rather resulted from the interaction of the five-year requirements of section 1504(c)(2) and section 1504(a)(3)(A).

Ruling

Based on the facts and information submitted and the representations made, we rule that the application of section 1504(a)(3)(A) is waived so that Parent and Sub may join in the filing of a consolidated federal income tax return of which Parent is the common parent beginning with the Year 6 taxable year.

Caveat

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Procedural Statements

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
(Corporate)